

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DOROTHY BRESNAHAN

Plaintiff(s)

v.

PF AYON TRUCKING, LLC, AND
DAVID SUITERS

Defendant(s)

CIVIL ACTION LAW

NO. Case Number

JURY TRIAL DEMANDED

**NOTICE AND PETITION OF REMOVAL OF DEFENDANT PF AYON
TRUCKING, LLC**

Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendant, PF Ayon Trucking, LLC (“Petitioning Defendant” or “PF Ayon”), by and through its attorneys, Goldberg Segalla LLP, submit this Notice and Petition for Removal from the Court of Common Pleas of Delaware County, Pennsylvania, in which the above-captioned matter is now pending, to the United States District Court for the Eastern District of Pennsylvania. In support of said Notice and Petition, Defendant states as follows:

1. Plaintiff Dorothy Bresnahan (“Plaintiff” or “Bresnahan”) commenced this personal injury action in the Court of Common Pleas of Delaware County, Case No. CV-2022-006294, by filing a complaint against defendants PF Ayon and David Suiters (“Suiters”) on August 25, 2022. *See Exhibit A.*
2. Petitioning Defendant was served with the Complaint on October 11, 2022.
3. Upon information and belief, Defendant Suiters has not yet been served.

4. Plaintiff's complaint arises out of an alleged motor vehicle accident which occurred on June 17, 2022 on Eagle Road near Reed Road in Springfield Township, Pennsylvania. *See Exhibit A.*

5. Plaintiff alleges that she was injured as a result of, *inter alia*, Defendants' negligence. *See Exhibit A.*

Timeliness of Removal

6. This Notice of Removal is timely filed in compliant with 28 U.S.C. §1446(b) as it is being filed within thirty (30) days from the date upon which Petitioning Defendant was served with the Complaint.

Diversity of Citizenship

7. 28 U.S.C. §1441(a) provides that a state court action over which a district court of the United States would possess original jurisdiction may be removed to the district court for the district and division embracing the place where the state court action is pending.

8. A district court shall have original jurisdiction over a proceeding wherein the matter in controversy exceeds \$75,000 and is between citizens of different states. 28 U.S.C. §1332(a).

9. A corporation shall be deemed to be a citizen of the state in which it is incorporated and the state of its principal place of business. 28 U.S.C. §1332(c)(1).

10. The citizenship of an unincorporated business trust is dependent upon the citizenship of its trustees and beneficiaries. *Americord Realty Trust v. Conagra Foods*, 136 S. Ct. 1012 (2016); *Luminent Mort. Capital, Inc. v. Merrill Lynch*, 652 F. Supp. 2d 576, 587 (E.D. Pa. 2009).

11. According to the Complaint in the instant case, Plaintiff is a citizen of Pennsylvania. *See Exhibit A.*

12. PF Ayon is a citizen of Delaware, its state of incorporation and the location of its principal place of business.

13. Diversity of citizenship exists because Plaintiff is a citizen of Pennsylvania and the only served defendant is a citizen of Delaware.

Amount in Controversy

14. If a party seeks the removal of an action based upon diversity of citizenship and demands nonmonetary relief in its initial pleading, the notice of removal may state the amount in controversy and the action will be removable if the district court finds, by a preponderance of the evidence, that the amount in controversy exceeds \$75,000.00. 28 U.S.C. §1446(c)(2).

15. Here, the court should find, by a preponderance of the evidence, that the amount in controversy is in excess of \$75,000, as Plaintiff has refused to sign a stipulation certifying that the damages alleged are valued at less than \$75,000.

Plea for Removal

16. There is complete diversity of citizenship and the amount in controversy exceeds the jurisdictional requirement of seventy-five thousand dollars (\$75,000.00); therefore, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332 and removal of this proceeding to this Court is proper pursuant to 28 U.S.C. §1441.

17. No served defendant is a citizen of the forum state of Pennsylvania such that removal is not precluded by 28 U.S.C. §1441(b).

18. Since the Delaware County Court of Common Pleas is located within the Eastern District of Pennsylvania, removal of this case to the United States District Court for the Eastern District of Pennsylvania is proper because it is the “district and division embracing the place where such action is pending.” 28 U.S.C. §1441(a).

19. Petitioning Defendant has, contemporaneously with the filing of this Notice and Petition of Removal, given written notice to all counsel and unrepresented parties of the removal of this matter.

20. Promptly after filing the within Notice and Petition of Removal, a copy of same will be filed with the Prothonotary of the Court of Common Pleas of Delaware County in accordance with 28 U.S.C. §1446(d).

WHEREFORE, Petitioning Defendant respectfully requests that this civil action be removed from the Court of Common Pleas of Delaware County, Pennsylvania to the United States District Court for the Eastern District of Pennsylvania.

Respectfully submitted,

GOLDBERG SEGALLA LLP

By: /s/ Christina L. Capobianco
Christina L. Capobianco, #95105
Mailing Address: PO Box 360, Buffalo NY
14201
1700 Market Street, Suite 1418
Philadelphia, PA 19103-3907
Telephone: 267-519-6800

*Attorneys for Defendant PF Ayon Trucking,
LLC*

Date: October 31, 2022

CERTIFICATE OF SERVICE

I, Christina L. Capobianco, hereby certify that this 31st day of October, 2022, a true and correct copy of the foregoing Notice and Petition of Removal of defendants was served via the Court's ECF and by electronic mail upon the following:

By: /s/ Christina L. Capobianco
Christina L. Capobianco, #95105
1700 Market Street, Suite 1418
Philadelphia, PA 19103-3907
(P) 267-519-6800
Attorneys for Defendant,
PF Ayon Trucking LLC

“EXHIBIT A”

Supreme Court of Pennsylvania

Court of Common Pleas
Civil Cover Sheet

DELAWARE

County

For Prothonotary Use Only:

Docket No:

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

Commencement of Action:

- ☒ Complaint ☐ Writ of Summons ☐ Petition
☐ Transfer from Another Jurisdiction ☐ Declaration of Taking

Lead Plaintiff's Name:

Dorothy Bresnahan

Lead Defendant's Name:

PF Ayon Trucking, LLC, et al.

Are money damages requested? ☒ Yes ☐ NoDollar Amount Requested: ☐ within arbitration limits
(check one) ☒ outside arbitration limitsIs this a *Class Action Suit*? ☐ Yes ☒ NoIs this an *MDJ Appeal*? ☐ Yes ☒ No

Name of Plaintiff/Appellant's Attorney: Bentley M. Saul, Esquire

☐ Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

Nature of the Case:

Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- ☐ Intentional
☐ Malicious Prosecution
☒ Motor Vehicle
☐ Nuisance
☐ Premises Liability
☐ Product Liability (does not include mass tort)
☐ Slander/Libel/ Defamation
☐ Other: _____

CONTRACT (do not include Judgments)

- ☐ Buyer Plaintiff
☐ Debt Collection: Credit Card
☐ Debt Collection: Other _____
☐ Employment Dispute: Discrimination
☐ Employment Dispute: Other _____
☐ Other: _____

CIVIL APPEALS

- Administrative Agencies
☐ Board of Assessment
☐ Board of Elections
☐ Dept. of Transportation
☐ Statutory Appeal: Other _____

- ☐ Zoning Board
☐ Other: _____

MASS TORT

- ☐ Asbestos
☐ Tobacco
☐ Toxic Tort - DES
☐ Toxic Tort - Implant
☐ Toxic Waste
☐ Other: _____

REAL PROPERTY

- ☐ Ejectment
☐ Eminent Domain/Condemnation
☐ Ground Rent
☐ Landlord/Tenant Dispute
☐ Mortgage Foreclosure: Residential
☐ Mortgage Foreclosure: Commercial
☐ Partition
☐ Quiet Title
☐ Other: _____

MISCELLANEOUS

- ☐ Common Law/Statutory Arbitration
☐ Declaratory Judgment
☐ Mandamus
☐ Non-Domestic Relations Restraining Order
☐ Quo Warranto
☐ Replevin
☐ Other: _____

PROFESSIONAL LIABILITY

- ☐ Dental
☐ Legal
☐ Medical
☐ Other Professional: _____

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY PENNSYLVANIA
CIVIL ACTION-LAW

DOROTHY BRESNAHAN

NO. _____

vs.

PF AYON TRUCKING, LLC., ET AL

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by an attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

**LAWYERS REFERENCE SERVICE
FRONT AND LEMON STREETS
MEDIA, PA 19063
610-566-6625**

BENTLEY M. SAUL, LTD.

By: Bentley M. Saul, Esquire
Identification No.: 68832
The Saul Law Building
1313 Race Street
Philadelphia, PA 19107
(215) 496-1100

Attorney for Plaintiff

DOROTHY BRESNAHAN
329 S. Norwinden Drive
Springfield, PA 19064

v.

PF AYON TRUCKING, LLC
781 Montclair Drive
Claymont, DE 19703
and
DAVID SUITERS
791 E. Lockerman Street
Dover, DE 19901

COURT OF COMMON PLEAS
DELAWARE COUNTY

CIVIL ACTION:

CIVIL ACTION COMPLAINT

Plaintiff by counsel, Bentley M. Saul, Esquire hereby demands damages from the Defendants herein, and in support thereof avers:

1. Plaintiff Dorothy Bresnahan is an adult individual who at all relevant times resides/ed at the above captioned address.
2. Defendant PF Ayon Trucking, LLC is an organized and existing entity that may be served with process at the above captioned address.
3. Defendant David Suiters is an adult individual who may be served with process at the above captioned address.

COUNT I
PLAINTIFF V. DEFENDANTS
NEGLIGENCE AND RECKLESSNESS

4. Plaintiff hereby incorporates paragraphs 1 through 3 above as if they were set forth fully and completely herein.

5. At all times material hereto Defendants owned operated occupied maintained managed and controlled a red 2010 80,000 lb GVW Kenworth W900 dump truck with US DOT #3144519 and MC# 119268 ["Kenworth Dump Truck"].

6. At all times material hereto Defendant Suiters operated and drove the said Kenworth Dump Truck Northbound on Eagle Road down a right-handed curve toward Reed Road in Springfield Township, Delaware County, Pennsylvania in a negligent reckless erratic and unsafe manner and at a speed too fast for conditions.

7. At all times material hereto Dorothy Bresnahan was lawfully operating a white 2017 GMC Savanna school students van owned by STA of Pennsylvania, Inc. on Southbound Eagle Road after making a left turn from the Springfield School District Bus Depot on a green traffic signal.

8. At all times material hereto Dorothy Bresnahan was acting within the course and scope of her agency and employment as a school bus/van operator.

9. On June 17, 2022 at or about 8:59 am Defendant Suiters drove the said Kenworth Dump Truck down the right-handed curve and hill on Northbound Eagle Road in the opposite direction to Dorothy Bresnahan in a negligent reckless erratic and unsafe manner and at an excessive rate of speed for conditions when he suddenly, erratically and without any advance warning swerved over the double yellow lines and into Ms. Bresnahan's lane of travel and and crashed violently head on into the front of the school van Ms. Bresnahan was operating.

10. Investigating Police who responded to the scene of this collision concluded that Defendant Suiters was the sole cause of this collision and charged him with violating Section 3361 of the PA Motor Vehicle Code for driving the said Kenworth Dump Truck at an excessive rate of speed.

11. Investigating Police who responded to the scene of this collision concluded that Dorothy Bresnahan bears no fault for the subject collision which was caused solely by the negligence and recklessness of Defendants.

12. This collision was caused solely by the carelessness negligence and recklessness of the Defendants and was not caused in any part by any act or failure to act on the part of Dorothy Bresnahan who at all times material hereto acted reasonably and with all due and appropriate

care.

14. The front of the said GVW 80,000 lb Kenworth Dump Truck collided with the front of the school van Dorothy Bresnahan was operating with tremendous force causing her to sustain serious permanent and life altering injuries and damages.

15. Dorothy Bresnahan was rushed from the scene of this collision by ambulance to the hospital and has been under medical care ever since.

16. Dorothy Bresnahan has not been able to work as a direct result of this collision caused by Defendants and the injuries and damages she sustained.

17. As a direct and proximate result of the joint and/or several and direct and/or vicarious negligence and recklessness of the Defendants, Dorothy Bresnahan sustained serious and permanent new onset bodily injuries and/or exacerbated prior asymptomatic conditions which may include to her head neck back spine discs body bones joints tissues nerves and nervous system as well as other damages and she is entitled to recover from Defendants including but not limited to for the following elements of damages:

- a. Cervical disc disorder with radiculopathy;
- b. Lumbar disc disorder with radiculopathy;
- c. Sternoclavicular separation;
- d. Concussion;
- e. Past and future medical expenses;
- f. Past lost earnings and earning capacity;
- g. Future lost earnings and earning capacity;
- h. Past pain;
- i. Future pain;
- j. Past suffering;
- k. Future suffering;
- l. Embarrassment and humiliation;
- m. Past lost enjoyment of life's pleasures;
- n. Future lost enjoyment of life's pleasures;
- o. Other injuries and damages suffered as a natural and probable result of the said collision and the injuries and damages resulting therefrom.

WHEREFORE, Plaintiff demands damages from the Defendants herein jointly and/or

severally and directly and/or vicariously in an amount in excess of the arbitration limits plus interest thereon costs and any other sums that this Honorable Court deems appropriate.

BENTLEY M. SAUL, LTD.

By: _____/s/_____

Bentley M. Saul, Esquire
Attorney for Plaintiff

Copying Prohibited

VERIFICATION

I, Dorothy Bresnahan, verify that the facts set forth in my Civil Action Complaint are true and correct to the best of my knowledge, information and belief.

I further acknowledge my understanding that false statements are made subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities.

(s) Dorothy M. Bresnahan